

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GREGORY A. BURNS,

Plaintiff,

v.

CITIBANK, N.A.; et al.,

Defendants.

3:13-CV-0349-LRH-WGC

ORDER

Before the court is defendant Citibank, N.A.'s ("Citibank") motion to dismiss. Doc. #3.<sup>1</sup> Plaintiff Gregory A. Burns ("Burns") filed an opposition (Doc. #6) to which Citibank replied (Doc. #8).

**I. Facts and Procedural History**

In February 2003, non-party Dane Hillyard, trustee of the Hillyard Family Trust, purchased the underlying real property in Reno, Nevada. The legal description of the property, as identified in the Washoe County Recorder's Office, is "Parcel 1 of Parcel Map No. 3827, Fourth Parcel Map for George and Judith J. Poore, according to the map therefore, filed in the office of the County Recorder of Washoe County, State of Nevada, on December 21, 2001, as File No. 2628265, Official Records." The assessor's parcel number for the property is 049-871-09.

<sup>1</sup> Refers to the court's docket number.

1 In May 2007, Hillyard obtained a revolving line of credit, secured by a recorded deed of  
2 trust, from defendant Citibank with a maximum credit limit of \$1,000,000. *See* Doc. #4, Exhibit B.  
3 The recorded deed of trust lists the assessor's parcel number 049-871-09; identified the trustor as  
4 Dane Hillyard, trustee of the Hillyard Family Trust; and identified the common address of the  
5 property. *Id.* However, the recorded deed of trust contained the wrong legal description of the  
6 property, listing it as parcel 1 of map 3227, rather than map 3827, and file number 2626265 instead  
7 of file number 2628265. *Id.*

8 In 2011, plaintiff Burns loaned Hillyard \$500,000 secured by a second deed of trust.  
9 Eventually, Hillyard defaulted on the loan and Burns foreclosed under his deed of trust. On October  
10 29, 2012, non-party NRES-NV1 LLC ("NRES") bought the property at the foreclosure sale. Burns  
11 then purchased the property from NRES in early 2013, after it allegedly discovered Citibank's deed  
12 of trust. Subsequently, on May 24, 2013, Burns filed the present action for quiet title. Doc. #1,  
13 Exhibit A. Thereafter, Citibank filed the present motion to dismiss. Doc. #3.

## 14 **II. Legal Standard**

15 Citibank seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to  
16 state a claim upon which relief can be granted. To survive a motion to dismiss for failure to state a  
17 claim, a complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice pleading  
18 standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That  
19 is, a complaint must contain "a short and plain statement of the claim showing that the pleader is  
20 entitled to relief." Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not require  
21 detailed factual allegations; however, a pleading that offers "'labels and conclusions' or 'a  
22 formulaic recitation of the elements of a cause of action'" will not suffice. *Ashcroft v. Iqbal*, 129 S.  
23 Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

24 Furthermore, Rule 8(a)(2) requires a complaint to "contain sufficient factual matter,  
25 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* at 1949 (quoting  
26 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows

1 the court to draw the reasonable inference, based on the court's judicial experience and common  
2 sense, that the defendant is liable for the misconduct alleged. *See id.* at 1949-50. "The plausibility  
3 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a  
4 defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a  
5 defendant's liability, it stops short of the line between possibility and plausibility of entitlement to  
6 relief." *Id.* at 1949 (internal quotation marks and citation omitted).

7 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as  
8 true. *Id.* However, "bare assertions . . . amount[ing] to nothing more than a formulaic recitation of  
9 the elements of a . . . claim . . . are not entitled to an assumption of truth." *Moss v. U.S. Secret*  
10 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1951) (brackets in original)  
11 (internal quotation marks omitted). The court discounts these allegations because "they do nothing  
12 more than state a legal conclusion—even if that conclusion is cast in the form of a factual  
13 allegation." *Id.* (citing *Iqbal*, 129 S. Ct. at 1951.) "In sum, for a complaint to survive a motion to  
14 dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be  
15 plausibly suggestive of a claim entitling the plaintiff to relief." *Id.* Moreover, though courts  
16 generally "may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6)  
17 motion," a court may consider "matters of public record." *United States v. Corinthian Colls.*, 655  
18 F.3d 984, 988-99 (9th Cir. 2011).

### 19 **III. Discussion**

20 Under Nevada law, a plaintiff may bring a quiet title action to determine adverse claims to  
21 real property. Nev. Rev. Stat. § 40.010. In his complaint, Burns seeks a declaration that he owns the  
22 underlying property free and clear of any interest created by Citibank's recorded deed of trust.  
23 Doc. #1, Exhibit A. Specifically, Burns alleges that because of the identified errors in the legal  
24 description of Citibank's deed of trust, prior purchaser and non-party NRES took title to the  
25 property as a bone fide purchaser ("BFP"), without notice of Citibank's deed of trust. *Id.* Burns,  
26 who bought the property from NRES, contends that he is therefore entitled to the rights and

1 privileges of a BFP including the extinguishment of Citibank's deed of trust. *Id.*

2       The court has reviewed the documents and pleadings on file in this matter and finds that  
3 Burns claim for quiet title as it relates to the extinguishment of Citibank's deed of trust fails as a  
4 matter of law. First, Burn's quiet title action fails because his complaint makes it clear that he had  
5 notice of the Citibank deed of trust when he purchased the property from NRES. *See* Doc. #1,  
6 Exhibit A, ¶¶26-27 (alleging that after purchasing the property NRES discovered Citibank's deed of  
7 trust who then sold the property to Burns). Thus, Burns does not qualify as a BFP because he had  
8 actual notice of the Citibank deed of trust when he acquired the property. *See Moore v. De*  
9 *Bernardi*, 220 P. 544, 548 (Nev. 1923) (holding that a purchaser with actual notice of an earlier  
10 equity is not a purchaser in good faith); *see also, Allison Steel Mfg. Co. v. Bentonite, Inc.*, 471 P.2d  
11 666, 669 (Nev. 1970).

12       Second, the court finds that both NRES and Burns were on constructive notice of Citibank's  
13 deed of trust as a matter of law, and therefore, neither NRES nor Burns are BFPs. The priority of  
14 competing claims to real property is governed by Nevada's recording statute, which provides that a  
15 recorded interest in property "impart[s] notice to all persons of the contents thereof; and subsequent  
16 purchasers and mortgagees shall be deemed to purchase and take notice." NRS § 111.320.

17       In this action, it is undisputed that Citibank's deed of trust was recorded in 2007, five years  
18 before NRES purchased the property at the foreclosure sale. Initially, Burns argues that the deed of  
19 trust was not properly recorded because the legal description of the property was partially incorrect.  
20 *See* Doc. #1, Exhibit A. However, under Nevada law, a recorded document related to real property  
21 need only contain an "adequate" description of the property. *See Hewitt v. Glaser Land & Livestock*  
22 *Co.*, 626 P.2d 268, 269 (Nev. 1981). A description is adequate if the property referred to can be  
23 identified with certainty by aid of extrinsic evidence. *Id.*

24       Here, Citibank's deed of trust correctly identified the assessor's parcel number and the  
25 common property address which is referenced on both the face of the deed of trust and the attached  
26 legal description. Thus, the court finds that the Citibank deed of trust contained enough information

1 to identify the subject property with certainty.

2        Additionally, any allegation that neither NRES nor Burns were able to discover Citibank's  
3 deed of trust can be discounted as a matter of law because a simple title search of Nevada's grantor-  
4 grantee index would have revealed the deed of trust regardless of any inaccuracies in the legal  
5 description. In Nevada, recorder's indexes are arranged alphabetically by grantor and grantee name  
6 and not by tract. As Nevada has described its system:

7            A prospective purchaser of land may search those indices to ensure that the  
8 person attempting to sell the property has clear title to it. To search the indices, the  
9 prospective purchase would first search the grantee index for the purported owner's  
10 name to ascertain when and from whom the purported owner received the property.  
11 Using that name, the purchaser would check the grantee index for the names of each  
12 previous owner, thus establishing the "chain of title." The purchaser must then search  
13 the grantor index, starting with the first owner in the chain of title, to see whether he  
or she transferred or encumbered the property during the time between his or her  
acquisition of the property and its transfer to the next person in the chain of title.  
*Whether or not a purchaser of real property performs this search, he or she is  
charged with constructive notice of, and takes ownership of the property subject to,  
any interest such a title search would reveal.*

14 *Adaven Mgmt., Inc. v. Mountain Falls Acquisition Corp.* 191 P.3d 1189, 1195 (Nev. 2008)  
15 (emphasis added); *see also, Tai-si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1088-89 (D. Nev. 2012).

16        Here, Citibank's deed of trust correctly identified Dane Hillyard as the grantee of its  
17 recorded deed of trust. As such, a simple search of the index would have identified Citibank's deed  
18 of trust, regardless of the identified inaccuracies of the legal description. Therefore, the court finds  
19 that both NRES and Burns are charged with constructive notice of Citibank's deed of trust and are  
20 not BFPs as a matter of law. *See also, Allison Steel Mfg. Co. v. Bentonite, Inc.*, 471 P.2d 666, 669  
21 (Nev. 1970). Accordingly, Burns' claim for quiet title fails to state a claim upon which relief can be  
22 granted.

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1 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #3) is  
2 GRANTED. Plaintiff's complaint (Doc. #1, Exhibit A) is DISMISSED in its entirety.

3 IT IS SO ORDERED.

4 DATED this 18<sup>th</sup> day of October, 2013.

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7 LARRY R. HICKS  
8 UNITED STATES DISTRICT JUDGE  
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